City of Lafayette Staff Report

For: City Council

By: Christine Sinnette, Senior Planner
Mark Robbins, Code Enforcement Officer

Date Written: September 4, 2009

Meeting Date: September 14, 2009

Subject: Consideration of proposed amendments to the Lafayette Municipal Code consisting of (1) Ordinance No. 586 amending Chapter 6-23, Outdoor Storage and Repairs (ZT04-09), (2) Ordinance No. 589 amending Chapter 1-3, Penalty Provisions, (3) Ordinance No. 590 amending Chapter 1-9, Administrative Citations, and (4) Ordinance No. 591 amending Chapter 8-21, Code Enforcement.

PURPOSE

One of the tasks in the Planning Services Division 2009 Work Plan is to amend and update the various chapters of the Lafayette Municipal Code (LMC) concerning code enforcement. These chapters include the following.

Chapter 1-3	Penalty Provisions (Ord. 589)
Chapter 1-9	Administrative Citations (Ord. 590)
Chapter 6-23	Outdoor Storage and Repairs (Ord. 586/ZT04-09)
Chapter 8-21	Code Enforcement (Ord. 591)

Chapters 1-3, 1-9, and 8-21 are being revised to correct inconsistencies between these LMC chapters. Chapter 6-23 is being revised to clarify definitions and procedures.

STAFF ANALYSIS AND COMMENTS

Chapter 1-3 (Ord. 589). The purpose of this chapter is to identify that violations of the LMC are misdemeanors, infractions or subject to civil penalty and provide for penalties for violations. Chapter 1-3 was adopted in 1968 and has not been updated since 1999. It contains outdated references to County codes and lacks coherent organization. Ordinance No. 589 amends Chapter 1-3 as follows.

- Adds that violations can be charged as infractions rather than misdemeanors. This allows the use of the administrative citation procedure to obtain compliance if necessary rather than requiring criminal action for fines and/or abatement.

- States penalties and fines pursuant to State Government Code.

- Eliminates outdated references to County codes and procedures.

Attachment 1 contains a strikeout and underline version showing the revisions as well as comments explaining the reason for the addition or deletion. See Attachment 2 for Ordinance No. 589.

Chapter 1-9 (Ord. 590). This chapter was last updated in 2006 when Chapter 8-21, Code Enforcement was added to the LMC. In 2009, staff was compelled to issue two citations for unabated violations of building codes. Based on this experience, and after discussions with the City Attorney, revisions to this chapter are being proposed to help better define the process and eliminate redundancies with Chapter 8-21. Ordinance No. 590 amends Chapter 9-1 as follows.

- Procedures for issuing warning notices and notices of violation are moved to this chapter from Chapter 8-21 and consolidated into one section for clarity and convenience.

- Procedures for service of warning notices, notices of violation and administrative citations are consolidated into one section for clarity and convenience.

- The former section "Fines" is expanded and revised to include payment procedure and identification of penalties pursuant to the Government Code.

- Sections on recovery of administrative fines and charges are eliminated because they are better addressed in Chapter 8-21.

Attachment 3 contains a strikeout and underline version showing the revisions as well as comments explaining the reason for the revision. See Attachment 4 for Ordinance No. 590.

Chapter 6-23 (Ord. 586/ZT04-09). Regulation of outdoor storage and repairs has been part of the LMC in one form or another since at least 1970. In conjunction with the creation and adoption of Chapter 8-21 in 2006, Chapter 6-23 was revised. Both chapters contain regulations regarding vehicles which resulted in redundancy and confusion. Chapter 6-23 is being revised to address the parking, storage and repair of vehicles only. Regulations for outdoor storage are being moved from Chapter 6-23 to Chapter 8-21. Ordinance No. 586 amends Chapter 6-23 as follows.

- New or revised definitions are needed to clarify the types of vehicles being addressed in the chapter. A definition for "front yard area" has been added to distinguish it from "front setback" which is used elsewhere in the zoning ordinance The current ordinances state that certain vehicles must be screened but there is no definition for what constitutes appropriate screening. Vehicles have been defined more generally per the California Vehicle Code.

- The chapter better distinguishes between passenger vehicles and recreational vehicles including boats and trailers.

- The chapter is reorganized to list permitted and prohibited activities as they relate to the parking and storing of vehicles by type.

- A use permit is required to park or keep a vehicle on vacant or unimproved land.

Attachment 5 contains a strikeout and underline version showing the revisions as well as comments explaining the reason for the addition or deletion. See Attachment 6 for Ordinance No. 591.

Chapter 8-21 (Ord. 591). This chapter was created and adopted in 2006. The Code Enforcement Officer has been administering this chapter for several years now and finds that some revisions are necessary to correct inconsistencies and clarify definitions and procedures. Ordinance 591 amends Chapter 8-21 as follows.

- Identifies that a violation of the chapter can be charged as an infraction consistent with Chapter 1-3.

- Revises definitions for "screened" and "vehicles" to be consistent with Chapter 6-23.

- Identifies that violations of land use entitlements are unlawful and subject to abatement. This section was moved from Chapter 1-3.

- Identifies storage of used, damaged or discarded tools, machinery and mechanical equipment as a violation. This section was moved from Chapter 6-23.

- Moves sections regarding issuance and service of warning notices and notices of violation and appeal of administrative citations to Chapter 1-9.

- Clarifies the difference between administrative penalties, administrative costs, and abatement costs.

Attachment 7 contains a strikeout and underline version showing the revisions as well as comments explaining the reason for the revision. See Attachment 8 for Ordinance No. 591.

CONSISTENCY WITH THE GENERAL PLAN

Chapters 1-3, 1-9, 6-23, and 8-21 all concern property use, maintenance and the protection of public health and welfare and procedures for abating violations of these chapters as well as other LMC sections such as Title 3, Building Regulations. Goal LU-1 is the only General Plan goal applicable to these amendments and these amendments will continue to support this land use goal.

Goal LU-1	**Protect the character and patterns of development of residential neighborhoods.**
Policy LU-1.4	Property Maintenance and Nuisance: Require that properties are well-maintained and nuisances are abated.
	Program LU-1.4.1: Fund a full time Code Enforcement Officer. *(Implemented)*
	Program LU-1.4.2: Consider adopting a property maintenance ordinance. *(Implemented)*

CEQA COMPLIANCE

The amendments described in ordinances 586 (ZT04-09), 589, 590 and 591 do not have the potential for resulting in either direct physical changes in the environment or a reasonably foreseeable indirect physical change in the environment and concern general policy and procedure making and are therefore not considered a "project" as defined in the California Environmental Quality Act (§15061(b)(3), CEQA Guidelines). A Notice of Exemption will be filed upon final City Council approval of the ordinances.

PLANNING COMMISSION RECOMMENDATION

Since Chapter 6-23 is part of the zoning ordinance, State law (§65854 Gov't Code) requires that the Planning Commission hold a public hearing and forward a recommendation on the zoning text amendment to the City Council. The Planning Commission held a public hearing on ZT04-09 (Ord. 586) on July 2, 2009. No one from the public spoke on this matter. The Planning Commission supported staff's revisions subject to the following minor changes.

- Revise title: Parking, ~~Outdoor~~Vehicle Storage and Repairs.
- Revise §6-2301: This chapter shall apply to any parcel of land which is legally used or zoned for residential purposes or is vacant and unimproved, irrespective of the zoning. This chapter shall apply to the parking, storage, and repair of vehicles. Use of property for outdoor storage or structures placed on property for storage of goods and materials is addressed elsewhere in this code.
- Revise §6-2302(d): Screened means shielded, concealed and substantially hidden from public view or adjoining property, at an elevation ~~up to~~ of at least six feet above ground level…

See Attachment 9 for the July 2, 2009 Planning Commission minutes and Attachment 10 Planning Commission Resolution 2009-11 recommending that the City Council amend Chapter 6-23 and approve ZT04-09.

PUBLICE NOTICE AND COMMENT

The public hearing for these ordinances was originally scheduled for the August 10, 2009 City Council meeting but continued without discussion to this meeting. Notice of the August 10 public hearing was published in the *Lamorinda Sun* on July 31, 2009 and no new public notice is required. To date, no one has contacted staff about the proposed ordinances.

RECOMMENDATION

Conduct first reading and public hearing and continue the matter to the consent calendar of the September 28, 2009 meeting for waiving of second reading and adoption of ordinances 586 (ZT04-09), 589, 590, and 591.

ATTACHMENTS

1. Chapter 1-3, Proposed Revisions
2. Chapter 1-3, Ordinance 589
3. Chapter 1-9, Proposed Revisions
4. Chapter 1-9, Ordinance 590
5. Chapter 6-23, Proposed Revisions
6. Chapter 6-23, Ordinance 585
7. Chapter 8-21, Proposed Revisions
8. Chapter 8-21, Ordinance 591
9. Planning Commission Minutes, July 2, 2009
10. Planning Commission Resolution 2009-11

Chapter 1-3 PENALTY PROVISIONS

1-301 Violations a misdemeanor infraction or subject to civil penalty.
1-302 Penalties.
1-303 Separate offenses.
1-304 Nuisance.
~~**1-305 Violation of land use permit, variance permit, rezoning or subdivision approval a misdemeanor.**~~
~~**1-306 Infractions.**~~
~~**1-307 Imprisonment in county jail.**~~
~~**1-308 County penalty provisions adopted.**~~
~~**1-309 Violation.**~~

1-301 Violations a misdemeanor, or infraction or subject to civil penalty.

(a) No person shall violate any provision or fail to comply with any requirement of this code. A person who violates a provision or fails to comply with a mandatory requirement of this code is guilty of a misdemeanor unless, in the City's discretion, the violation of a particular provision of this code is charged as an infraction or ~~is~~ made subject ~~only~~ to ~~civil~~ administrative penalties pursuant to chapter 1-9 of this code~~imposed by a civil procedure~~.

Comment [A1]: Charging violations as infractions allows the City to use the administrative citation procedure (Chapter 1-9) to obtain compliance rather than following the conviction procedures required for a misdemeanor.

(b) Except as otherwise provided, all provisions of this code relating to misdemeanors shall apply to infractions, including but not limited to authority of city officers and employees to make arrests and the procedure for making arrests.

1-302 Penalties.

(a) Misdemeanor. Except as otherwise provided by statute or this code, a~~A~~ person convicted of a misdemeanor under this code, unless specific provision is otherwise made, shall be issued ~~punished by~~ (1) a fine not exceeding $250.00 for a first violation; (2) a fine not exceeding $500.00 for a second violation of the same ordinance within one year, and/or (3) a fine ~~of~~ not exceeding ~~more than~~ $1,000.00 for each additional violation of the same ordinance within one year from the date of the first violation, or by imprisonment in the county jail for a period of not more than six months, or both. Under Section 36903 of the Government Code, the county jail is prescribed as the~~a~~ place for imprisonment for such violation of this code and of any ordinance.

Comment [A2]: Fines are set by the State Government Code.

(b) Infractions.

(1) Except as otherwise provided by statute or this code, a person convicted of an infraction under this code, unless specific provision is made otherwise, shall be issued ~~every infraction violation of this code is punishable by A person convicted of an infraction, unless specific provision is otherwise made, shall be punished by~~ (1) a fine not exceeding $100.00 for a first violation; (2) a fine not exceeding $200.00 for a second violation of the same ordinance within one year from the date of the first violation; and/or (3) a fine not exceeding $500.00 for each additional violation of the same ordinance within one year from the date of the first violation.

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(2) Except as otherwise provided by statute or this code, a person convicted of an infraction under this code for a violation of building and safety ordinances, including but not limited to, those in Title 3, unless specific provision is made otherwise, shall be issued ~~every infraction violation building and safety ordinances, including but not limited to, those in Title 3., is punishable by~~ (1) a fine not exceeding $100.00 for a first violation~~,~~; (2) $500.00 for a second violation of the same ordinance within one year from the date of the first violation~~,~~; and (3) $1,000.00 for each additional violation of the same ordinance within one year from the date of the first violation.

Comment [A3]: Fines are different for violations of building and safety ordinances. Title 3, LMC, contains the building and fire codes adopted by the City.

(c) Civil Penalty. Except as otherwise provided by statute or this code, ~~A~~ a person who violates any section of this code, unless specific provision is otherwise made, may be issued an administrative citation and be liable for an administrative penalty pursuant to chapter 1-9 of this code. ~~for which a civil penalty is imposed shall pay the penalty established by the city council.~~ When specifically authorized by a provision of this code the city council may set the penalty by resolution.

1-303 Separate offenses.

Each person is guilty of a separate offense for each and every day during any portion of which ~~the~~ a violation of this code is committed, continued or permitted to exist by that person.

1-304 Nuisance.

In addition to the penalties provided, any condition caused or permitted to exist in violation of a provision of this code is a public nuisance and may be summarily abated as such. Each day that such condition exists is a new and separate offense."

~~1-305 Violation of land use permit, variance permit, rezoning or subdivision approval a misdemeanor.~~

Comment [A4]: Section deleted because violations of zoning, land use, and development permits are addressed in revised §8-2104

~~(a) Each person or the successor of each person who holds a land use permit or a variance permit issued by the city shall comply with each provision of the permit and with each term that is imposed as a condition to the exercise of the permit.~~

~~(b) Each person or the successor of each person who receives a rezoning or subdivision approval shall comply with each provision of the approval and with each term that is imposed as a condition to the approval of the rezoning or subdivision.~~

~~(c) Each person who violates either subsection (a) or subsection (b) of this section is guilty of a violation of this section. A person who violates this section is guilty of a misdemeanor and shall be punished as provided in Section 1-302. The penalty provided in this section is in addition to provisions of this code that provide for forfeiture of the permit or authorize the imposition of civil fine or penalty.~~
~~(Ord. 505 § 1, 1999: Ord. 381 § 7(d), 1990: Ord. 36 § 1, 1970)~~

~~**1-306 Infractions.**~~

~~(a) Unless otherwise indicated, it shall be an infraction for a person to violate or fail to comply with a provision of the following chapters or articles of this code:~~
~~(1) Chapter 6-25, Signs.~~

Comment [A5]: Section unnecessary because §1-301 states that all violations of the Municipal Code can be infractions.

(b) Except as otherwise provided, all provisions of this code relating to misdemeanors shall apply to infractions, including but not limited to authority of city officers and employees to make arrests and the procedure for making arrests.
(Ord. 381 § 7(e), 1990: Ord. 290 § 3, 1983)

1-307 Imprisonment in county jail.

Under Section 36903 of the Government Code, the county jail is prescribed as the place for imprisonment for each violation of a city ordinance. (Ord. 8 § 1, 1968)

Comment [A6]: Already addressed in §1-320(a).

1-308 County penalty provisions adopted.

Comment [A7]: This section referred to building code provisions adopted by the County. The City has adopted by reference all required building codes which are included in Title 3. This section is unnecessary with revision to §1-302(b).

In accordance with Government Code Section 50022.4, the following penalty clauses contained in the Ordinance Code of Contra Costa County (as amended by County Ordinance No. 76-51) are enacted:

(a) Section 14.8.002, which reads as follows:
14.8.002 Violation--Infraction. Except as otherwise provided (and regardless of the availability of other civil or administrative remedies and procedures for enforcing this Code), every act or condition prohibited or declared unlawful by this Code, and every failure or omission to act as required herein, is a violation of this Code and is an infraction.

(b) Section 14.8.004, which reads as follows:
14.8.004 Violation--Punishment. (a) Infractions. Except as otherwise provided by statute or this Code, every infraction violation of this Code is punishable, upon conviction thereof, by (1) a fine not exceeding fifty dollars ($50) for a first violation; (2) a fine not exceeding one hundred dollars ($100) for a second violation of the same ordinance within one year; (3) a fine not exceeding two hundred fifty dollars ($250) for each additional violation of the same ordinance within one year.
(Ord. 381 § 7(f), 1990: Ord. 182 § 1 (part), 1977: Ord. 131 § 4 (part), (1--3) (part), 1975)

1-309 Violation.

Comment [A8]: This section no longer necessary as grading is now addressed in Title 3. See comment A7.

(a) In addition to the civil penalties imposed under Section 1-904of the Lafayette Municipal Code and the system of administrative remedies provided for under Chapter 1-10 of the Lafayette Municipal Code, an act or condition prohibited or declared unlawful under the provisions of County Ordinance No. 99-46 and every failure or omission to act as required under Ordinance No. 99-46 is an infraction.

(b) An infraction is punishable by a fine of $100 for a first violation, $200 for a second violation within one year and $500 for each additional violation within one year.

(c) Each day during which an offense exists is a separate offense.

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

IN THE MATTER OF:

An Ordinance of the City Council of the City of Lafayette Amending Chapter 1-3 of the Lafayette Municipal Code Entitled "Penalty Provisions"	)	Ordinance No. 589

THE CITY COUNCIL OF THE CITY OF LAFAYETTE DOES ORDAIN AS FOLLOWS:

Section 1. Amendments. Chapter 1-3 of Title 1 of the Lafayette Municipal Code entitled "Penalty Provisions" is hereby amended to read as follows:

"Chapter 1-3

PENALTY PROVISIONS

1-301 Violations a misdemeanor, or infraction or subject to civil penalty.

(a) No person shall violate any provision or fail to comply with any requirement of this code. A person who violates a provision or fails to comply with a mandatory requirement of this code is guilty of a misdemeanor unless, in the City's discretion, the violation of a particular provision of this code is charged as an infraction or made subject to administrative penalties pursuant to chapter 1-9 of this code.

(b) Except as otherwise provided, all provisions of this code relating to misdemeanors shall apply to infractions, including but not limited to authority of city officers and employees to make arrests and the procedure for making arrests.

1-302 Penalties.

(a) Misdemeanor. Except as otherwise provided by statute or this code, a person convicted of a misdemeanor under this code, unless specific provision is otherwise made, shall be issued (1) a fine not exceeding $250.00 for a first violation; (2) a fine not exceeding $500.00 for a second violation of the same ordinance within one year, and/or (3) a fine not exceeding $1,000.00 for each additional violation of the same ordinance within one year from the date of the first violation, or by imprisonment in the county jail for a period of not more than six months, or both. Under Section 36903 of the Government Code, the county jail is prescribed as the place for imprisonment for such violation of this code and of any ordinance.

(b) Infractions.

(1) Except as otherwise provided by statute or this code, a person convicted of an infraction under this code, unless specific provision is made otherwise, shall be issued (1) a fine not exceeding $100.00 for a first violation; (2) a fine not exceeding $200.00 for a second violation of the same ordinance within one year from the date of the first violation; and/or (3) a fine not

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exceeding $500.00 for each additional violation of the same ordinance within one year from the date of the first violation.

(2) Except as otherwise provided by statute or this code, a person convicted of an infraction under this code for a violation of building and safety ordinances, including but not limited to, those in Title 3, unless specific provision is made otherwise, shall be issued (1) a fine not exceeding $100.00 for a first violation; (2) $500.00 for a second violation of the same ordinance within one year from the date of the first violation; and (3) $1,000.00 for each additional violation of the same ordinance within one year from the date of the first violation.

(c) Civil Penalty. Except as otherwise provided by statute or this code, a person who violates any section of this code, unless specific provision is otherwise made, may be issued an administrative citation and be liable for an administrative penalty pursuant to chapter 1-9 of this code. When specifically authorized by a provision of this code, the city council may set the penalty by resolution.

1-303 Separate offenses.

Each person is guilty of a separate offense for each and every day during any portion of which a violation of this code is committed, continued or permitted to exist by that person.

1-304 Nuisance.

In addition to the penalties provided, any condition caused or permitted to exist in violation of a provision of this code is a public nuisance and may be summarily abated as such. Each day that such condition exists is a new and separate offense."

Section 2. CEQA. The City Council finds that adoption of this Ordinance is not a "project," as defined in the California Environmental Quality Act because it does not have a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and concerns general policy and procedure making.

Section 3. Notice of Exemption. The City Council directs staff to prepare and file a Notice of Exemption no more than five (5) working days after adoption of this Ordinance.

Section 4. Effective Date. This Ordinance becomes effective thirty (30) days after its adoption.

Section 5. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not effect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

Section 6. Publication. The City Clerk shall either (a) have this Ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a

summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

The foregoing Ordinance was introduced at a meeting of the City Council of the City of Lafayette held on September 14, 2009 and was adopted and ordered published at a meeting of the City Council held on _____, 2009 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

_____
Joanne Robbins, City Clerk

APPROVED:

_____
Don Tatzin, Mayor

Chapter 1-9 ADMINISTRATIVE CITATIONS

1-901 Findings and determination.
1-902 Definitions.
1-903 Warning notice, notice of violation and time to correct.
1-9034 Administrative citation.
1-9045 Service of warning notice, notice of violation and administrative citations.
1-906 Administrative penalties.
1-9057 Appeals.
1-9068 Appeal hearing procedure.
1-9079 Decision of the code enforcement appeals board.
1-90810 Right to judicial review.
~~**1-909 Fines.**~~
~~**1-910 Administrative charges.**~~
~~**1-911 Recovery of fines and administrative charges.**~~

1-901 Findings and determination.

The city council finds and determines as follows:

(a) Sections 1-901 through Section 1-~~911~~910, inclusive, shall be known as the administrative citation ordinance.

(b) This chapter is enacted under the authority of California Government Code Sections 36901 and 53069.4.

(c) The administrative citation process in this chapter is in addition to all other legal remedies, criminal or civil, available to the city to address a violation of this municipal code.

(d) This chapter may be used to enforce any violations of this municipal code, including Chapter 8-21.

(e) The use of this chapter is at the sole discretion of the city.

1-902 Definitions.

(a) "Code enforcement appeals board" or "board" means the code enforcement appeals board as described in Chapter 2-10.

(b) "Code enforcement officer" or "officer" means the city employee or agent of the city designated by the city manager to administer this chapter. The code enforcement officer may be the same official as described in Section 8-2102C or any other employee or agent designated by the city manager to serve in this capacity.

(c) "Days" means calendar days. In the event the last day of the specified time period falls on a Saturday, Sunday or federal holiday observed by the city, then the last day of the specified time period shall be the next business day.

(d) "Owner" means the owner or owners of record of real property as shown on the latest county

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equalized assessment roll; the lessee, tenant or other person having control or possession of the property where the violation occurred; the mortgagee under a recorded deed of trust; and any other person having a recorded beneficial or legal interest.

1-903 Warning notice, notice of violation and time to correct.

Comment [cs1]: This section moved here from Chapter 8-21, Code Enforcement for clarity and convenience. Warning notice and notice of violation consolidated into one section.

(a) Warning notice. Whenever the code enforcement officer determines that a violation of this municipal code has occurred and that the violation does not pose an immediate hazard to the general welfare, health and safety, the officer may issue a warning notice to the owner. A warning notice shall be served in accordance with section 1-905 and shall include the following information:

(1) Address or definite description of the location where the violation occurred;

(2) Description of the violation and applicable section or sections of this municipal code violated;

(3) Requirements for abating the violation, and the dated by which the correction must be completed not to exceed twenty (20) days based on the type, severity and number of previous violations on the same property, unless the officer determines there are circumstances that warrant additional time for abatement; and

(4) Consequences for not abating the violation within the time specified in the warning, including but not limited to the imposition of administrative penalties, administrative charges, incurring of abatement costs, issuance of administrative citations and/or other legal remedies available to the city.

(b) Notice of violation. If the violation is not abated within the time limit specified in the warning notice, the officer may issue a written notice of violation to the owner. Notice shall be served in accordance with section 1-905 and shall include the following information:

(1) Date the violation was observed by the code enforcement officer;

(2) Address or a definite description of the location where the violation occurred;

(3) Description of the violation and applicable section or sections of this municipal code violated;

(4) Requirements for abating the violation, and the date by which the correction must be completed not to exceed thirty (30) days based on the type, severity and number of previous violations on the same property, unless the officer determines there are circumstances that warrant additional time for abatement;

(5) An explanation that if the violation is not corrected by the correction date set forth in the notice of violation, an administrative citation, carrying administrative penalties in the amounts set forth in this chapter, which will begin to accrue immediately on the date the administrative citation is issued, and continue to accrue on a daily basis thereafter until the violation is corrected, may be issued; and

(6) The name and signature of the code enforcement officer, and the date of issuance.

1-~~903~~904 Administrative citation.

(a) When the code enforcement officer determines that a violation of this municipal code for which a notice of violation was issued was not corrected by the correction date set forth in the notice of violation ~~has occurred~~, the officer may issue an administrative citation to the person responsible for the violation.

(b) The administrative citation shall include the following information:

(1) Date the violation was observed by the code enforcement officer;

(2) Address or a definite description of the location where the violation occurred;

(3) Description of violation and applicable section or sections of this municipal code violated;

(4) Amount of the fine for the code violation;

(5) Date by which the fine is due and payable to the city;

(6) Consequences of not paying the fine by the due date; and

(7) Process for appealing the issuance of the administrative citation.

(c) The administrative citation may also include administrative costs pursuant to section 8-2111(b)(1) of this code.

Comment [cs2]: Added to clarify that administrative costs for staff's time in seeking ordinance compliance will be added to the fines imposed by the citation.

1-~~904~~905 Service of warning notice, notice of violation and administrative citations.

Comment [cs3]: Procedures consolidated into one section.

A warning notice, notice of violation and ~~Administrative~~ administrative citations shall be served in one of the following methods:

(a) The code enforcement officer may personally serve the warning notice, notice of violation or citation on the person responsible for the violation. The warning notice, notice of violation or citation shall become effective on the date of personal service.

(b) The code enforcement officer may mail the warning notice, notice of violation or citation by ~~first class mail and~~ certified mail, return receipt requested, to the owner of the property where the violation occurred at the address shown on the county's last property tax assessment rolls or to any other address known for the owner. The warning notice, notice of violation or citation shall become effective on the date of the ~~first class~~certified mailing.

(c) The code enforcement officer may post the property where the violation occurred with the warning notice, notice of violation or citation in a conspicuous place when the owner or person responsible for the violation resides at an unknown address. A copy of the warning notice, notice of violation or citation also shall be sent ~~first class mail and~~ certified mail, return receipt requested, to the subject property where the violation occurred to the owner's attention. The

warning notice, notice of violation or citation shall become effective on the date of the posting of the property.

(d) The failure of an owner or other person responsible for the violation to receive a notice or citation shall not affect the validity of any proceedings taken under this chapter.

1-906 Administrative penalties.

Comment [A4]: Former section "Fines" expanded and revised to include payment procedure, identification of penalties, and provide code enforcement officer discretion in imposing fines.

(a) Unless the code enforcement officer has received a notice of appeal to indicate that the administrative citation is being contested pursuant to the procedure and within the time period provided in this chapter, administrative penalties shall accrue on the date of the administrative citation and continue to accrue on a daily basis until the violation(s) is corrected as set forth in the administrative citation to the satisfaction of the code enforcement officer. Administrative penalties shall become due and payable within thirty (30) days of the effective date of the administrative citation and shall be payable directly to the City of Lafayette, Citations c/o Finance Department, 3675 Mt. Diablo Blvd #210, Lafayette, CA 94549.

(b) Except where otherwise provided in the code, or where otherwise determined by the code enforcement officer pursuant to section 1-906(c) below, the amount of the administrative penalty imposed by an administrative citation shall be as follows:

(1) One hundred dollars ($100.00) for a first violation of any provision of this code determined to be an infraction including a violation of building or safety code provision;

(2) Two hundred dollars ($200.00) for a second violation of the same provision (other than a building or safety code provision) within one year from the date of issuance of the administrative citation, and five hundred dollars ($500.00) for a second violation of a building or safety code provision within one year from the date of issuance of the administrative citation;

(3) Five hundred dollars ($500.00) for each additional violation of the same provision (other than a building or safety code provision) within one year from the date of issuance of the administrative citation, and one thousand dollars ($1,000.00) for each additional violation of a building or safety code provision within one year from the date of issuance of the administrative citation;

(c) The code enforcement officer, in its discretion, may impose an administrative penalty in some lesser amount than those set forth in section 1-906(b) above, taking some or all of the following factors into consideration, in determining the amount of the penalty:

(1) The duration of the violation;

(2) The frequency, recurrence and number of violations, related or unrelated, by the same violator;

(3) The seriousness of the violation;

(4) The good faith efforts of the violator to come into compliance;

(5) The economic impact of the penalty on the violator;

(6) The impact of the violation on the community; or

(7) Such other factors as justice may require.

(d) The code enforcement officer, in its discretion, may suspend the imposition of administrative penalties for any period of time during which:

(1) The violator has filed for necessary permits;

(2) Such permits are required to achieve compliance; and

(3) Such permit applications are actively pending before the city, state or other appropriate governmental agency.

1-~~905~~907 Appeals.

A recipient of an administrative citation may appeal the ~~notice~~ citation and may request a hearing before the code enforcement appeals board as follows:

(a) An appeal form shall be obtained from the code enforcement officer. The completed appeal form shall be filed with the officer within 14 days of the effective date of the administrative citation together with an appeal fee established by resolution by the city council.

(b) Only after the completed appeal form has been filed together with the appeal fee shall the code enforcement officer set the date for a hearing. The hearing shall be set for a date not less than 14 days or more than 60 days after the officer received the request.

(c) The appellant may request one continuance, but in no event shall the hearing be continued more than 30 days after the date of the originally scheduled hearing unless the code enforcement officer finds circumstances of hardship warrant a longer continuance not to exceed 90 days after the date of the originally scheduled hearing.

(d) The appellant shall be notified by ~~first class mail and~~ certified mail, return receipt requested, of the date, time and place set for the hearing. Notice shall be sent at least ten days prior to the date of the hearing. The notice shall include a statement that the city may pursue any and all legal and equitable remedies for the recovery of unpaid fines and administrative charges. The notice shall be mailed to the appellant at the address provided on the completed appeal form. Failure of the appellant to receive notice shall not affect the validity of any proceedings taken under this chapter.

(e) Any documentation, other than the administrative citation, which the code enforcement officer has submitted or will submit to the code enforcement appeals board shall be served on the appellant at least three days before the hearing.

(f) Failure of a recipient of an administrative citation to file an appeal in accordance with the provisions of this section shall be deemed to waive his or her right to an appeal hearing.

1-~~906~~908 Appeal hearing procedure.

(a) No appeal hearing shall be held unless the appeal fee has been paid in accordance with Section 1-~~905~~907.

(b) Hearings by the code enforcement appeals board are informal and formal rules of evidence and discovery shall not apply.

(c) The code enforcement officer and appellant shall be given the opportunity to testify and present evidence concerning the alleged violation.

(d) The administrative citation and any additional report submitted by the code enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents.

(e) The code enforcement appeals board may continue a hearing to request additional information from the code enforcement officer and/or appellant and/or to conduct an inspection of the location of the violation prior to concluding the hearing.

(f) If the violation is non-conformance with a permit issued under Title 6, the code enforcement appeals board may continue the hearing and refer the violation to the body that issued the permit for additional information and/or recommendation, including the zoning administrator, design review commission, planning commission, or city council

(~~f~~g) If the location of the violation is on property owned by the appellant, the code enforcement appeals board may inspect the property prior to the conclusion of the hearing provided that the appellant consents to the inspection, is given the notice of the date and time of the inspection, and is permitted to be present during the inspection. The board shall state for the record during the hearing the material facts observed and conclusions drawn from the inspection. The appellant shall be afforded an opportunity to rebut or explain the matters so stated by the board. If the location of the violation can be inspected from areas accessible to the general public or with the permission of other persons authorized to provide access to the location, then notice to and consent of the appellant is not required.

(~~g~~h) Failure of the appellant to appear at the hearing shall constitute a waiver of his or her right to an administrative hearing.

1-~~907~~909 Decision of the code enforcement appeals board.

(a) After considering all of the testimony and evidence submitted during the hearing, the code enforcement appeals board shall adopt a resolution to uphold, modify or cancel the administrative citation. The decision of the board is final. The resolution shall include the reasons for that decision which may be based on any or all of the following factors:

(1) Duration of the violation;

(2) Frequency, recurrence and/or number of related violations by the appellant;

(3) Seriousness of the violation;

(4) Good faith efforts of the appellant to correct the violation; and/or

(5) Other factors as justice may require.

(b) If the code enforcement appeals board determines the administrative citation should be upheld, then the resolution shall include the action required to correct the violation and the date by which such action must be completed. The date of compliance shall be no more than 60 days from the date of the board's decision. The resolution shall include a payment schedule for any unpaid fines and/or administrative charges. The resolution shall also include the consequences of failing to correct the violation, including the placement of liens and/or special assessments, and the right to judicial review pursuant to Section 1-~~908~~910.

(c) If the code enforcement appeals board determines the administrative citation should be modified in terms of methods of correcting the violation and/or time limit for compliance, then the resolution shall include the modified action to correct the violation and/or the date by which correction must be completed. The resolution shall include a payment schedule for any unpaid fines and administrative charges. The resolution shall also include the consequences of failing to correct the violation, and the right to judicial review pursuant to Section 1-~~908~~910.

(d) The code enforcement appeals board may determine that the administrative citation should be canceled; in this case, all further actions related to this administrative citation shall be terminated.

1-~~908~~910 Right to judicial review.

The appellant may seek judicial review of the board's decision by filing a petition with a court of competent jurisdiction pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. The board's resolution shall contain a statement so advising the appellant of the time limit on seeking court review."

~~1-909 Fines.~~

~~(a) The amount of the fine for each code violation imposed by an administrative citation shall be at the maximum amount permitted by law, and shall be established by city council resolution. The resolution shall specify an increased fine for a repeat violation by the same person within 12 months from the date of the original administrative citation.~~

~~(b) The fine shall be due within 30 days from the date of the administrative citation.~~

~~(c) Payment of a fine shall not excuse or discharge a continued or repeated code violation that is the subject of an administrative citation.~~

Comment [cs5]: Expanded and revised in new section 1-906, Administrative penalties.

~~1-910 Administrative charges.~~

~~In addition to any fines associated with a citation, an administrative charge shall be added, when such fines are not paid within the time limit specified on the citation, to recover the administrative costs associated with the collection of fines. The amount of the administrative charge shall be established by city council resolution based on an analysis of the city's direct and indirect personnel costs, including but not limited to, expenditures for personnel, materials and overhead required to collect unpaid fines.~~

Comment [cs6]: Unnecessary; recovery of administrative charges are addressed in Chapter 8-21, Code Enforcement.

~~1-911 Recovery of fines and administrative charges.~~

~~(a) Cumulative Remedies. At its discretion, the city may pursue any and all legal and equitable remedies for the recovery of fines and/or administrative charges. Pursuit of one remedy does not~~

Comment [cs7]: Unnecessary; recovery of administrative charges are address in Chapter 8-21.

~~preclude the pursuit of any other remedies until the total amount of fines and/or administrative charges have been recovered. Anyone receiving an administrative citation who fails to pay any fines and/or administrative charges owed to the city shall be liable in any action brought by the city for costs incurred in securing payment of the delinquent amount. The city's collection costs may include, but are not limited to, those for personnel, materials, overhead, attorney's fees and any other city expenditures required to collect unpaid fines and/or administrative charges.~~
~~(b) Liens--Special Assessments. The amount of any unpaid fines and/or administrative charges may be made a lien or special assessment on the real property on which the violation occurred.~~
~~(1) The code enforcement officer shall present a report on unpaid fines and/or administrative charges and a resolution of lien or special assessment to the city council.~~
~~(2) At least ten days before the city council meeting at which the cost report and resolution of lien or special assessment are considered, the officer shall mail the owner a copy, together with a notice of the time and place of the council meeting at which the report will be considered, and advising the owner that he or she may appear and protest any fine and/or administrative charge contained in the report. The report and notice shall also be posted conspicuously on the subject property.~~
~~(3) At the time fixed for hearing on the report of expenses, the council shall consider the report and protests or objections by the owner liable to be assessed for the fines and/or charges. The council may revise, correct, modify or cancel the report as it considers just. Thereafter, unless the report is cancelled, the council may confirm the report and approve the lien or special assessment. The owner shall be notified by mail of the council's action.~~
~~(4) The lien or special assessment shall attach when the officer records a certificate listing unpaid fines and/or administrative charges with the county recorder's office. The certificate shall specify the amount of the lien or special assessment, the street address, legal description, and assessor's parcel number of the parcel on which the lien or special assessment is imposed, and the name and address of the record owner of the parcel. In the event that the lien or special assessment is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified above shall be recorded by the officer. The lien or special assessment may be foreclosed by an action brought by the city for a money judgment. Until the lien or special assessment is discharged, released, or satisfied, interest shall apply at the maximum amount allowed by law.~~

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

IN THE MATTER OF:

An Ordinance of the City Council of the City of Lafayette Amending Chapter 1-9 of the Lafayette Municipal Code Entitled "Administrative Citations"	)	Ordinance No. 590

THE CITY COUNCIL OF THE CITY OF LAFAYETTE DOES ORDAIN AS FOLLOWS:

Section 1. Amendments. Chapter 1-9 of Title 1 of the Lafayette Municipal Code entitled "Administrative Citations" is hereby amended to read as follows:

"Chapter 1-9

ADMINISTRATIVE CITATIONS

1-901 Findings and determination.

The city council finds and determines as follows:

(a) Sections 1-901 through Section 1-910, inclusive, shall be known as the administrative citation ordinance.

(b) This chapter is enacted under the authority of California Government Code Sections 36901 and 53069.4.

(c) The administrative citation process in this chapter is in addition to all other legal remedies, criminal or civil, available to the city to address a violation of this municipal code.

(d) This chapter may be used to enforce any violations of this municipal code, including Chapter 8-21.

(e) The use of this chapter is at the sole discretion of the city.

1-902 Definitions.

(a) "Code enforcement appeals board" or "board" means the code enforcement appeals board as described in Chapter 2-10.

(b) "Code enforcement officer" or "officer" means the city employee or agent of the city designated by the city manager to administer this chapter. The code enforcement officer may be the same official as described in Section 8-2102C or any other employee or agent designated by the city manager to serve in this capacity.

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(c) "Days" means calendar days. In the event the last day of the specified time period falls on a Saturday, Sunday or federal holiday observed by the city, then the last day of the specified time period shall be the next business day.

(d) "Owner" means the owner or owners of record of real property as shown on the latest county equalized assessment roll; the lessee, tenant or other person having control or possession of the property where the violation occurred; the mortgagee under a recorded deed of trust; and any other person having a recorded beneficial or legal interest.

1-903 Warning notice, notice of violation and time to correct.

(a) Warning notice. Whenever the code enforcement officer determines that a violation of this municipal code has occurred and that the violation does not pose an immediate hazard to the general welfare, health and safety, the officer may issue a warning notice to the owner. A warning notice shall be served in accordance with section 1-905 and shall include the following information:

(1) Address or definite description of the location where the violation occurred;

(2) Description of the violation and applicable section or sections of this municipal code violated;

(3) Requirements for abating the violation, and the dated by which the correction must be completed not to exceed twenty (20) days based on the type, severity and number of previous violations on the same property, unless the officer determines there are circumstances that warrant additional time for abatement; and

(4) Consequences for not abating the violation within the time specified in the warning, including but not limited to the imposition of administrative penalties, administrative charges, incurring of abatement costs, issuance of administrative citations and/or other legal remedies available to the city.

(b) Notice of violation. If the violation is not abated within the time limit specified in the warning notice, the officer may issue a written notice of violation to the owner. Notice shall be served in accordance with section 1-905 and shall include the following information:

(1) Date the violation was observed by the code enforcement officer;

(2) Address or a definite description of the location where the violation occurred;

(3) Description of the violation and applicable section or sections of this municipal code violated;

(4) Requirements for abating the violation, and the date by which the correction must be completed not to exceed thirty (30) days based on the type, severity and number of previous violations on the same property, unless the officer determines there are circumstances that warrant additional time for abatement;

(5) An explanation that if the violation is not corrected by the correction date set forth in the notice of violation, an administrative citation, carrying administrative penalties in the amounts set forth in this chapter, which will begin to accrue immediately on the date the administrative citation is issued, and continue to accrue on a daily basis thereafter until the violation is corrected, may be issued; and

(6) The name and signature of the code enforcement officer, and the date of issuance.

1-904 Administrative citation.

(a) When the code enforcement officer determines that a violation of this municipal code for which a notice of violation was issued was not corrected by the correction date set forth in the notice of violation, the officer may issue an administrative citation to the person responsible for the violation.

(b) The administrative citation shall include the following information:

(1) Date the violation was observed by the code enforcement officer;

(2) Address or a definite description of the location where the violation occurred;

(3) Description of violation and applicable section or sections of this municipal code violated;

(4) Amount of the fine for the code violation;

(5) Date by which the fine is due and payable to the city;

(6) Consequences of not paying the fine by the due date; and

(7) Process for appealing the issuance of the administrative citation.

(c) The administrative citation may also include administrative costs pursuant to section 8-2111(b)(1) of this code.

1-905 Service of warning notice, notice of violation and administrative citation.

A warning notice, notice of violation and administrative citation shall be served in one of the following methods:

(a) The code enforcement officer may personally serve the warning notice, notice of violation or citation on the person responsible for the violation. The warning notice, notice of violation or citation shall become effective on the date of personal service.

(b) The code enforcement officer may mail the warning notice, notice of violation or citation by certified mail, return receipt requested, to the owner of the property where the violation occurred at the address shown on the county's last property tax assessment rolls or to any other address known for the owner. The warning notice, notice of violation or citation shall become effective on the date of the certified mailing.

(c) The code enforcement officer may post the property where the violation occurred with the warning notice, notice of violation or citation in a conspicuous place when the owner or person responsible for the violation resides at an unknown address. A copy of the warning notice, notice of violation or citation also shall be sent certified mail, return receipt requested, to the subject property where the violation occurred to the owner's attention. The warning notice, notice of violation or citation shall become effective on the date of the posting of the property.

(d) The failure of an owner or other person responsible for the violation to receive a notice or citation shall not affect the validity of any proceedings taken under this chapter.

1-906 Administrative penalties.

(a) Unless the code enforcement officer has received a notice of appeal to indicate that the administrative citation is being contested pursuant to the procedure and within the time period provided in this chapter, administrative penalties shall accrue on the date of the administrative citation and continue to accrue on a daily basis until the violation(s) is corrected as set forth in the administrative citation to the satisfaction of the code enforcement officer. Administrative penalties shall become due and payable within thirty (30) days of the effective date of the administrative citation and shall be payable directly to the City of Lafayette, Citations c/o Finance Department, 3675 Mt. Diablo Blvd #210, Lafayette, CA 94549.

(b) Except where otherwise provided in the code, or where otherwise determined by the code enforcement officer pursuant to section 1-906(c) below, the amount of the administrative penalty imposed by an administrative citation shall be as follows:

(1) One hundred dollars ($100.00) for a first violation of any provision of this code determined to be an infraction including a violation of building or safety code provision;

(2) Two hundred dollars ($200.00) for a second violation of the same provision (other than a building or safety code provision) within one year from the date of issuance of the administrative citation, and five hundred dollars ($500.00) for a second violation of a building or safety code provision within one year from the date of issuance of the administrative citation;

(3) Five hundred dollars ($500.00) for each additional violation of the same provision (other than a building or safety code provision) within one year from the date of issuance of the administrative citation, and one thousand dollars ($1,000.00) for each additional violation of a building or safety code provision within one year from the date of issuance of the administrative citation;

(c) The code enforcement officer, in its discretion, may impose an administrative penalty in some lesser amount than those set forth in section 1-906(b) above, taking some or all of the following factors into consideration, in determining the amount of the penalty:

(1) The duration of the violation;

(2) The frequency, recurrence and number of violations, related or unrelated, by the same violator;

(3) The seriousness of the violation;

(4) The good faith efforts of the violator to come into compliance;

(5) The economic impact of the penalty on the violator;

(6) The impact of the violation on the community; or

(7) Such other factors as justice may require.

(d) The code enforcement officer, in its discretion, may suspend the imposition of administrative penalties for any period of time during which:

(1) The violator has filed for necessary permits;

(2) Such permits are required to achieve compliance; and

(3) Such permit applications are actively pending before the city, state or other appropriate governmental agency.

1-907 Appeals.

A recipient of an administrative citation may appeal the citation and may request a hearing before the code enforcement appeals board as follows:

(a) An appeal form shall be obtained from the code enforcement officer. The completed appeal form shall be filed with the officer within 14 days of the effective date of the administrative citation together with an appeal fee established by resolution by the city council.

(b) Only after the completed appeal form has been filed together with the appeal fee shall the code enforcement officer set the date for a hearing. The hearing shall be set for a date not less than 14 days or more than 60 days after the officer received the request.

(c) The appellant may request one continuance, but in no event shall the hearing be continued more than 30 days after the date of the originally scheduled hearing unless the code enforcement officer finds circumstances of hardship warrant a longer continuance not to exceed 90 days after the date of the originally scheduled hearing.

(d) The appellant shall be notified by certified mail, return receipt requested, of the date, time and place set for the hearing. Notice shall be sent at least ten days prior to the date of the hearing. The notice shall include a statement that the city may pursue any and all legal and equitable remedies for the recovery of unpaid fines and administrative charges. The notice shall be mailed to the appellant at the address provided on the completed appeal form. Failure of the appellant to receive notice shall not affect the validity of any proceedings taken under this chapter.

(e) Any documentation, other than the administrative citation, which the code enforcement officer has submitted or will submit to the code enforcement appeals board shall be served on the appellant at least three days before the hearing.

(f) Failure of a recipient of an administrative citation to file an appeal in accordance with the

provisions of this section shall be deemed to waive his or her right to an appeal hearing.

1-908 Appeal hearing procedure.

(a) No appeal hearing shall be held unless the appeal fee has been paid in accordance with Section 1-907.

(b) Hearings by the code enforcement appeals board are informal and formal rules of evidence and discovery shall not apply.

(c) The code enforcement officer and appellant shall be given the opportunity to testify and present evidence concerning the alleged violation.

(d) The administrative citation and any additional report submitted by the code enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents.

(e) The code enforcement appeals board may continue a hearing to request additional information from the code enforcement officer and/or appellant and/or to conduct an inspection of the location of the violation prior to concluding the hearing.

(f) If the violation is non-conformance with a permit issued under Title 6, the code enforcement appeals board may continue the hearing and refer the violation to the body that issued the permit for additional information and/or recommendation, including the zoning administrator, design review commission, planning commission, or city council

(g) If the location of the violation is on property owned by the appellant, the code enforcement appeals board may inspect the property prior to the conclusion of the hearing provided that the appellant consents to the inspection, is given the notice of the date and time of the inspection, and is permitted to be present during the inspection. The board shall state for the record during the hearing the material facts observed and conclusions drawn from the inspection. The appellant shall be afforded an opportunity to rebut or explain the matters so stated by the board. If the location of the violation can be inspected from areas accessible to the general public or with the permission of other persons authorized to provide access to the location, then notice to and consent of the appellant is not required.

(h) Failure of the appellant to appear at the hearing shall constitute a waiver of his or her right to an administrative hearing.

1-909 Decision of the code enforcement appeals board.

(a) After considering all of the testimony and evidence submitted during the hearing, the code enforcement appeals board shall adopt a resolution to uphold, modify or cancel the administrative citation. The decision of the board is final. The resolution shall include the reasons for that decision which may be based on any or all of the following factors:

(1) Duration of the violation;

(2) Frequency, recurrence and/or number of related violations by the appellant;

(3) Seriousness of the violation;

(4) Good faith efforts of the appellant to correct the violation; and/or

(5) Other factors as justice may require.

(b) If the code enforcement appeals board determines the administrative citation should be upheld, then the resolution shall include the action required to correct the violation and the date by which such action must be completed. The date of compliance shall be no more than 60 days from the date of the board's decision. The resolution shall include a payment schedule for any unpaid fines and/or administrative charges. The resolution shall also include the consequences of failing to correct the violation, including the placement of liens and/or special assessments, and the right to judicial review pursuant to Section 1-910.

(c) If the code enforcement appeals board determines the administrative citation should be modified in terms of methods of correcting the violation and/or time limit for compliance, then the resolution shall include the modified action to correct the violation and/or the date by which correction must be completed. The resolution shall include a payment schedule for any unpaid fines and administrative charges. The resolution shall also include the consequences of failing to correct the violation, and the right to judicial review pursuant to Section 1-910.

(d) The code enforcement appeals board may determine that the administrative citation should be canceled; in this case, all further actions related to this administrative citation shall be terminated.

1-910 Right to judicial review.

The appellant may seek judicial review of the board's decision by filing a petition with a court of competent jurisdiction pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. The board's resolution shall contain a statement so advising the appellant of the time limit on seeking court review."

Section 2. CEQA. The City Council finds that adoption of this Ordinance is not a "project," as defined in the California Environmental Quality Act because it does not have a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and concerns general policy and procedure making.

Section 3. Notice of Exemption. The City Council directs staff to prepare and file a Notice of Exemption no more than five (5) working days after adoption of this Ordinance.

Section 4. Effective Date. This Ordinance becomes effective thirty (30) days after its adoption.

Section 5. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not effect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional,

invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

Section 6. Publication. The City Clerk shall either (a) have this Ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

The foregoing Ordinance was introduced at a meeting of the City Council of the City of Lafayette held on September 14, 2009 and was adopted and ordered published at a meeting of the City Council held on _____, 2009 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

_____
Joanne Robbins, City Clerk

APPROVED:

_____
Don Tatzin, Mayor

Chapter 6-23 PARKING, ~~OUTDOOR~~ VEHICLE STORAGE AND REPAIRS*

Comment [cs1]: Added by Planning Commission

6-2301 Applicability.
6-2302 Definitions.
6-2303 Permitted activities.
6-2303~~4~~ Prohibited activities.
6-2305 Parking on vacant or unimproved lot subject to use permit.
6-2304~~6~~ Enforcement.

* Prior ordinance history: Ords. 41, 45 and 461.

6-2301 Applicability.

This chapter shall apply to any parcel of land which is legally used or zoned for residential purposes or is vacant and unimproved, irrespective of the zoning. (Ord. 560 § 6 (part), 2006) This chapter shall apply to the parking, storage, and repair of vehicles. Use of property for outdoor storage or structures placed on property for storage of goods and materials is addressed elsewhere in this code.

Comment [cs2]: Added by Planning Commission

6-2302 Definitions.

(a) "Adjoining property" means a property which shares a common boundary with a subject property or a property that is directly across a public or private street or road from a subject property.

(b) "Front yard area", means an open area extending across the front of a lot, measured from the front property line or access easement, whichever is lesser, toward the rear of the lot to the nearest line of the primary residence.

Comment [cs3]: Added to differentiate between front setback and entire area in front of primary residence. Setback typically only covers 20 to 25 feet of "front yard area".

~~(b)~~(c) "Public view" means the view from a public or private street or road which serves more than one property or from a public walkway or trail.

(d) "Screened" means shielded, concealed and substantially hidden from public view or adjoining property, at an elevation at least six feet above ground level, by a fence, wall, lattice, hedge, berm, or similar structure, architectural or landscape feature, or combination thereof, as deemed appropriate by the planning services manager.

Comment [cs4]: Added to provide criteria for appropriate screening.

Comment [cs5]: Revised by Planning Commission from "up to" "at least".

~~(c)~~(e) "Vehicle" means a device by which any person or property may be propelled, moved, or drawn upon a highway, street, road, avenue, lane, alley, court, place, square, curb or other similar surface improved, designed or ordinarily used for vehicular traffic, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.~~car, van, truck, mobile home, recreational vehicle, trailer, boat, aircraft, or motorcycle.~~

Comment [cs6]: Added for consistency with California Vehicle Code. Types of vehicles are now listed elsewhere in this Chapter.

6-2303 Permitted activities.

Comment [cs7]: Added to define permitted activities related to vehicles based on vehicle type.

1. Placing, parking, or keeping of a registered and fully operable car(s), van(s), truck(s), sport utility vehicle(s) (SUV) and motorcycle(s) is a permitted use on occupied lots, subject to the following conditions:

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(a) Said vehicle(s) is owned by or registered to the owner or occupant of the lot, or guest thereof;
(b) Said vehicle(s) is parked on a paved or similarly surfaced area that is designed and intended for the purpose of parking vehicles, and that is connected to a driveway that has direct access from a public or private road or access easement;
(c) Said vehicle(s) is not parked in the front yard area unless parked on a driveway that connects to covered parking;
(d) Said vehicle(s) is not used for living or sleeping purposes; and
(e) Said vehicle(s) is rated for a maximum payload of one ton or less.

2. Placing, parking or keeping of registered and fully operable recreational vehicle(s), trailer(s) (e.g., for a boat, cargo, debris, horse, etc.), boat(s), or aircraft is a permitted use on occupied lots subject to the following conditions:

(a) Said vehicle(s) is owned by or registered to the owner or occupant of the lot;
(b) Said vehicle(s) is screened from public view and adjoining property;
(c) Said vehicle(s) is not parked in the front yard area; and
(d) Said vehicle(s) is not used for living or sleeping purposes.

6-2303~~4~~ Prohibited activities.

Comment [cs8]: Revised to more clearly define prohibited activities related to vehicles based on vehicle type.

1. No person shall engage in any of the following activities, unless ~~if~~ the activity is ~~not~~fully screened from public view or an adjoining property:

(a) Place, ~~Store,~~ park, keep, or allow to remain for more than 96 consecutive hours ~~an apparently~~ disabled or inoperable vehicle~~,~~ or part(s) of a vehicle~~, machinery, appliance, tool, or other mechanical equipment;~~, or materials used in the repair, servicing, construction or assembly of vehicles~~ or other mechanical apparatus, appliances or devices; and/or~~

Comment [cs9]: Regulation of these items has been moved to Chapter 8-21.

(b) Construct, repair, disassemble or service any vehicle more than eight days per year, or between the hours of ~~ten~~9:00 p.m. and ~~seven~~7:00 a.m. of any day~~, a vehicle, appliance or any other mechanical apparatus or device of any kind, except a bicycle~~; and/or

(c) Place, park, keep, or allow to remain any recreational vehicle, boat, aircraft, trailer (e.g., for a boat, cargo, debris, horse, etc.) either for more than 36 consecutive hours, or intermittently for periods exceeding 72 hours total in any 30-day period.

Comment [cs10]: This section allows a person with such a vehicle to park it without benefit of screening while the vehicle is being prepared for use.

2. No person shall use any vehicle for living or sleeping purposes.

3. No person shall place, park or keep a vehicle(s) on a vacant or unimproved lot unless a land use permit is obtained pursuant to section 6-2305.

6-2305 Parking on vacant or unimproved lot subject to use permit.

Comment [cs11]: Added to provide permit procedure.

1. The purpose of this section is to prevent owners of vacant or unimproved lots from storing vehicles on those lots, and to implement the Lafayette general plan which envisions maintaining the semi-rural character of the city. This section is intended to:

(a) Protect the health and welfare of residential neighborhoods;
(b) Prevent nuisance situations that can change the nature of a residential neighborhood;
(c) Prevent potential safety hazards to pedestrians and other vehicles caused by the unexpected ingress and egress of vehicles from vacant or unimproved lots; and
(d) Minimize the aesthetic and visual impacts of storing vehicles on vacant or unimproved lots.

2. A land use permit is required to place, park, or keep a vehicle(s) on a vacant or unimproved lot, irrespective of the land use district in which the land is located, as follows:

(a) An application for a land use permit shall be submitted to the zoning administrator accompanied by the required fee as established by resolution of the city council;
(b) If the zoning administrator finds that the vehicle(s) is owned by or registered to the owner of the lot; is not used for living purposes on the lot; is screened from public view; will not create a safety hazard as a result of the ingress and egress of the vehicle onto the lot; and that the proposed storage of the vehicle meets the findings required for a land use permit set forth in Section 6-215 of this code, the zoning administrator may issue a land use permit without the requirement for a public hearing.
(c) If the zoning administrator determines that a public hearing is necessary to address potential impacts of the permit, written notice of an application shall be provided as prescribed in section 6-211(b) of this code.
(d) The zoning administrator may refer the application to the planning commission for review and action.
(e) The hearing authority may approve, conditionally approve or deny the application based on its consideration of the factors outlined in section (2)(b) above, and the purposes and intent of this Section.
(f) The decision of the hearing authority is subject to the right of appeal in the manner as set forth in Chapter 6-2, Article 3

Comment [cs12]: Provides a purpose and general policies by which to evaluate the requested land use permit.

6-2304<u>6</u> Enforcement.

Engaging in a~~A~~ny activity prohibited in this chapter ~~Section 6-2303~~ shall be a violation of this chapter and may be subject to enforcement in accordance with Chapters 1-9 and/or 8-21 of this ~~municipal~~ code~~.~~, in addition to all other legal remedies, criminal or civil, available to the city to address a violation of this code ~~Such activity may also be subject to the provisions of Penal Code Section 373a, Civil Code Section 3494, Code of Civil Procedure Section 731, and Government Code Section 38773.~~

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

IN THE MATTER OF:

An Ordinance of the City Council of the City of Lafayette Amending Chapter 6-23 of the Lafayette Municipal Code Entitled "Outdoor Storage and Repairs" (ZT04-09)	)	Ordinance No. 585

THE CITY COUNCIL OF THE CITY OF LAFAYETTE DOES ORDAIN AS FOLLOWS:

Section 1. Amendments. Chapter 6-23 of Title 8 of the Lafayette Municipal Code entitled "Outdoor Storage and Repairs" is hereby amended to read as follows:

"Chapter 6-23

PARKING, VEHICLE STORAGE AND REPAIRS

6-2301 Applicability.

This chapter shall apply to any parcel of land which is legally used or zoned for residential purposes or is vacant and unimproved, irrespective of the zoning. (Ord. 560 § 6 (part), 2006) This chapter shall apply to the parking, storage, and repair of vehicles. Use of property for outdoor storage or structures placed on property for storage of goods and materials is addressed elsewhere in this code.

6-2302 Definitions.

(a) "Adjoining property" means a property which shares a common boundary with a subject property or a property that is directly across a public or private street or road from a subject property.

(b) "Front yard area", means an open area extending across the front of a lot, measured from the front property line or access easement, whichever is lesser, toward the rear of the lot to the nearest line of the primary residence.

(c) "Public view" means the view from a public or private street or road which serves more than one property or from a public walkway or trail.

(d) "Screened" means shielded, concealed and substantially hidden from public view or adjoining property, at an elevation at least six feet above ground level, by a fence, wall, lattice, hedge, berm, or similar structure, architectural or landscape feature, or combination thereof, as deemed appropriate by the planning services manager.

(e) "Vehicle" means a device by which any person or property may be propelled, moved, or drawn upon a highway, street, road, avenue, lane, alley, court, place, square, curb or other similar

surface improved, designed or ordinarily used for vehicular traffic, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

6-2303 Permitted activities.

(1) Placing, parking, or keeping of a registered and fully operable car(s), van(s), truck(s), sport utility vehicle(s) (SUV) and motorcycle(s) is a permitted use on occupied lots, subject to the following conditions:

(a) Said vehicle(s) is owned by or registered to the owner or occupant of the lot, or guest thereof;

(b) Said vehicle(s) is parked on a paved or similarly surfaced area that is designed and intended for the purpose of parking vehicles, and that is connected to a driveway that has direct access from a public or private road or access easement;

(c) Said vehicle(s) is not parked in the front yard area unless parked on a driveway that connects to covered parking;

(d) Said vehicle(s) is not used for living or sleeping purposes; and

(e) Said vehicle(s) is rated for a maximum payload of one ton or less.

(2) Placing, parking or keeping of registered and fully operable recreational vehicle(s), trailer(s) (e.g., for a boat, cargo, debris, horse, etc.), boat(s), or aircraft is a permitted use on occupied lots subject to the following conditions:

(a) Said vehicle(s) is owned by or registered to the owner or occupant of the lot;

(b) Said vehicle(s) is screened from public view and adjoining property;

(c) Said vehicle(s) is not parked in the front yard area; and

(d) Said vehicle(s) is not used for living or sleeping purposes.

6-2304 Prohibited activities.

(1) No person shall engage in any of the following activities, unless the activity is fully screened from public view or an adjoining property:

(a) Place, park, keep, or allow to remain for more than 96 consecutive hours a disabled or inoperable vehicle or part(s) of a vehicle, or materials used in the repair, servicing, construction or assembly of vehicles;

(b) Construct, repair, disassemble or service any vehicle more than eight days per year, or between the hours of 9:00 p.m. and 7:00 a.m. of any day; and/or

(c) Place, park, keep, or allow to remain any recreational vehicle, boat, aircraft, trailer (e.g., for a boat, cargo, debris, horse, etc.) either for more than 36 consecutive hours, or intermittently for periods exceeding 72 hours total in any 30-day period.

(2) No person shall use any vehicle for living or sleeping purposes.

(3) No person shall place, park or keep a vehicle(s) on a vacant or unimproved lot unless a land use permit is obtained pursuant to section 6-2305.

6-2305 Parking on vacant or unimproved lot subject to use permit.

1. The purpose of this section is to prevent owners of vacant or unimproved lots from storing vehicles on those lots, and to implement the Lafayette general plan which envisions maintaining the semi-rural character of the city. This section is intended to:

(a) Protect the health and welfare of residential neighborhoods;

(b) Prevent nuisance situations that can change the nature of a residential neighborhood;

(c) Prevent potential safety hazards to pedestrians and other vehicles caused by the unexpected ingress and egress of vehicles from vacant or unimproved lots; and

(d) Minimize the aesthetic and visual impacts of storing vehicles on vacant or unimproved lots.

(2) A land use permit is required to place, park, or keep a vehicle(s) on a vacant or unimproved lot, irrespective of the land use district in which the land is located, as follows:

(a) An application for a land use permit shall be submitted to the zoning administrator accompanied by the required fee as established by resolution of the city council;

(b) If the zoning administrator finds that the vehicle(s) is owned by or registered to the owner of the lot; is not used for living purposes on the lot; is screened from public view; will not create a safety hazard as a result of the ingress and egress of the vehicle onto the lot; and that the proposed storage of the vehicle meets the findings required for a land use permit set forth in Section 6-215 of this code, the zoning administrator may issue a land use permit without the requirement for a public hearing.

(c) If the zoning administrator determines that a public hearing is necessary to address potential impacts of the permit, written notice of an application shall be provided as prescribed in section 6-211(b) of this code.

(d) The zoning administrator may refer the application to the planning commission for review and action.

(e) The hearing authority may approve, conditionally approve or deny the application based on its consideration of the factors outlined in section (2)(b) above, and the purposes and intent of this Section.

(f) The decision of the hearing authority is subject to the right of appeal in the manner as set forth in Chapter 6-2, Article 3

6-2306 Enforcement.

Engaging in any activity prohibited in this chapter shall be a violation of this chapter and may be subject to enforcement in accordance with Chapters 1-9 and/or 8-21 of this code, in addition to all other legal remedies, criminal or civil, available to the city to address a violation of this code."

Section 2. CEQA. The City Council finds that adoption of this Ordinance is not a "project," as defined in the California Environmental Quality Act because it does not have a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and concerns general policy and procedure making.

Section 3. Notice of Exemption. The City Council directs staff to prepare and file a Notice of Exemption no more than five (5) working days after adoption of this Ordinance.

Section 4. Effective Date. This Ordinance becomes effective thirty (30) days after its adoption.

Section 5. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not effect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

Section 6. Publication. The City Clerk shall either (a) have this Ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

The foregoing Ordinance was introduced at a meeting of the City Council of the City of Lafayette held on September 14, 2009 and was adopted and ordered published at a meeting of the City Council held on _____, 2009 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

Joanne Robbins, City Clerk

Don Tatzin, Mayor